

**04-721      LAMARQUE, WARDEN V. CHAVIS**

DECISION BELOW:            382 F.3d 921 (9th Cir. 2004)

QUESTION PRESENTED

Did the Ninth Circuit contravene this Court's decision in *Carey v. Saffold* when it held that a prisoner who delayed more than three years before filing a habeas petition with the California Supreme Court did not "unreasonably" delay in filing the petition -- and therefore was entitled to tolling during that entire period -- because the California Supreme Court summarily denied the petition without comment or citation, which the Ninth Circuit construes as a denial "on the merits"?

Cert. Granted 5/2/05